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No. 97-211

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1997

THE GRAND FRATERNITY ROSAE CRUCIS,
Petitioner,

v.

WILLIAM B. MOYER, ESQUIRE and
GERALD POESNECKER,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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Petitioner, the Grand Fraternity Rosae Crucis a/k/a the August Fraternity (the "Fraternity") hereby submits this Reply to Respondent's Brief in Opposition as follows:

A. Introduction

Respondents' Brief in Opposition succinctly - albeit unintentionally - sets forth the compelling need for the intervention of this Court to halt the wholesale hijacking of an entire religion *pursuant to court decree*. As set forth in their Brief in Opposition, Respondents purport to speak on behalf of Petitioner for no other reason than that the Pennsylvania courts have *anointed* Respondent Poesnecker as the Fraternity's *religious* leader and directed Respondent Moyer to assist Poesnecker in expropriating the Fraternity's worldly assets. This appalling and unprecedented abuse of governmental power led to the action below in the United States District Court for the Eastern District of Pennsylvania.

B. Background

The Fraternity is a hierarchial religious organization which has been in existence in the United States since 1774. Organizationally, it is an ecclesiastical hierarchy headed by a religious leader known as the Supreme Grand Master who has plenary control of all religious and temporal affairs. The Fraternity is not a congregational religious organization in which government of temporal affairs rests in its members as a self-governing independent democracy. Instead, in addition to the Supreme Grand Master, its religious authority is administered by the Council of Seven in a hierarchical religious government.

Dr. R. Swinburne Clymer was the Supreme Grand Master of the Fraternity from 1905 to his passing in 1966. His son, Emerson Clymer, served as Supreme Grand Master from 1966 to his passing in 1983. Respondent Gerald E. Poesnecker assumed leadership and became the presumptive Supreme Grand Master in 1983 and was removed in 1989 by the duly constituted Council of Seven for his many violations of and as required by the Organic Laws of the Fraternity.

In 1905 Dr. R. Swinburne Clymer, using his personal resources, created a physical headquarters for the Fraternity known as "Beverly Hall" in Quakertown, Pennsylvania. In 1921, he created the Beverly Hall Corporation (hereinafter "Corporation") as a non-profit religious corporation under Pennsylvania law to carry on the religious activities of the Fraternity. In 1941 he created the Beverly Hall Foundation (hereinafter "Foundation") as a non-profit corporation to hold title to the land and other property of the Fraternity as a "perpetual trust" for the religious use and benefit of the Fraternity. Both the Corporation and the Foundation were created as membership corporations with strictly proscribed voting rights in the by-laws limited to only those eligible members of the Fraternity and the Church of Illumination who met certain religious qualifications, and who apply for and are approved by the Board of Directors. Accordingly, qualification of voting members is an ecclesiastical decision. In 1980, Emerson Clymer changed the Foundation, but not the Corporation, to a non-membership corporation.

The ecclesiastical activities of the Fraternity are governed by its Canon Law which includes the following:

a) The Organic Laws which were promulgated by Dr. Clymer in 1964;

b) Its separate religious tenets;

c) Its ancient laws, usages and landmarks.

The Organic Laws govern not only matters dealing with internal religious affairs but also with secular religious matters conducted by the Corporation and Foundation. Examples of provisions dealing with purely internal religious affairs include but are not limited to the following:

a) The manner of succession to the office of Supreme Grand Master;

b) The creation of a Council of Three as a pool for the selection of a succeeding Supreme Grand Master;

c) Specific duties, obligations and limitations on the authority of a succeeding Supreme Grand Master;

d) Requirement of removal of a Supreme Grand Master for any violation of the Organic Laws;

e) The creation of a Council of Seven with mandatory authority to remove a miscreant Supreme Grand Master for any violation of the Organic Laws;

f) Requirement of removal of any Supreme Grand Master who is not in complete harmony with the religious teaching of the fraternity and deviates from the then existing religious texts and lessons of instructions.

Examples of provisions of the Organic Laws dealing with secular matters include but are not limited to the following:

a) That the Supreme Grand Master is also the President and Director General of the Corporation and the Foundation and the Director General of the Church of Illumination;

b) That the Supreme Grand Master selects and removes officers of the Corporation and Foundation;

c) The religious qualifications of the other directors and officers of the Corporation and Foundation;

d) Prohibiting the mortgaging of any real estate or other property of the Fraternity;

e) Protecting and restricting the use of the buildings and structures at Beverly Hall for the religious use only by Fraternity members.

Accordingly, the Fraternity, the Corporation and the Foundation are intertwined. And the supremacy of the Fraternity Canon Law over inconsistent provisions of the Pennsylvania Non-Profit Corporation Law is guaranteed by the subordination section thereof (15 Pa. C.S.A. Sec. 5107).

C. The underlying dispute

On September 12, 1989, the Council of Seven removed Respondent Poesnecker as Supreme Grand Master of the Fraternity for numerous violations of the Organic Laws relating to both purely internal religious matters and temporal corporal activities. Such removal was mandated by the Organic Laws which unequivocally provide as follows:

"I, R. Swinburne Clymer, do hereby make these Articles of Organic Law of the August Fraternity and declare that they shall be unequivocally binding upon the present Supreme

Grand Master and all succeeding Supreme Grand Masters and full and complete compliance therewith and obedience thereto is mandatory.

"Failure on the part of any Supreme Grand Master to comply with the letter or spirit of any of the provisions herein contained shall be just cause for the removal of such Supreme Grand Master from office."

At the same time, the Council of Seven installed Dr. Paul Ricchio as temporary Supreme Grand Master and appropriate action was taken in accordance with the by-laws to remove Poesnecker and others from their positions as directors and officers of the Corporation and the Foundation.

On September 13, 1989 the new corporate officers as trustees of all Fraternity property, lawfully took possession of the worldly assets of the August Fraternity.

Thus, prior to the state court litigation referenced in Respondents' Brief in Opposition, the genuine Fraternity was under the legitimate control of Dr. Ricchio as the newly appointed Supreme Grand Master and all of the Fraternity property was under the legitimate corporate control and possession of Dr. Ricchio and other duly installed directors and officers of the Corporation and the Foundation, all in compliance with the Organic Laws and the corporate by-laws. The genuine Fraternity was conducting its purely religious activities in full harmony with the Organic Laws as a hierarchical organization.

Subsequently, Respondent Poesnecker initiated legal action in the state courts to regain control of the Corporation and the Foundation. The proceedings in the state courts extended over five years of tedious, convoluted, confusing and expensive piecemeal litigation. Significantly, at the very beginning of the litigation, the state court trial judge opined that he was not sympathetic to a hierarchical religious organization in which one man had autocratic powers and its secret contributing membership had no vote or say in the organization. This opinion concerning the propriety of the Fraternity's ecclesiastical religious structure ultimately became the law as decreed by the Pennsylvania Courts. The litigation produced a congregational organization established by judicial decree led by

Respondent Poesnecker, a deposed, presumptive Supreme Grand Master who had egregiously violated the Organic Laws. The Pennsylvania Courts purported to convert the Fraternity from a hierarchical church to a congregational church because the Courts did not believe that a hierarchical religious structure was seemly and proper. As the chief beneficiary of this abuse of power, Respondent Poesnecker has subsequently tried to convert the Fraternity from a purely religious organization to a materialistic cult for his personal gain. Today, by operation of *court decree*, Respondent Poesnecker controls the Fraternity as the *elected* Supreme Grand Master and Director General of the Corporation and Foundation. This court ordered reign profanes the religious doctrine of the genuine Fraternity by making it serve Respondent Poesnecker's materialist, cultist and non-religious activities. He has undermined the Fraternity by advocating the abandonment of the Organic Laws and the hierarchical structure of the Fraternity.

The genuine Fraternity, together with its related corporations, has been illegally democratized and transformed from a hierarchical religious organization into a congregational church. Its Organic Laws have been nullified and its original by-laws emasculated by the action of the Pennsylvania courts. All of this was accomplished by judicial fiat under the guise of corporate oversight in which the state courts substantially burdened the free exercise of religion of the genuine Fraternity by refusing to accept as final the decision of the Council of Seven removing Respondent Poesnecker as Supreme Grand Master, returning the deposed miscreant Poesnecker as the Supreme Grand Master, sanctioning Poesnecker's spurious Council of Seven, changing the essential hierarchical elements of the Fraternity, authorizing a plebiscite of non-qualified voting members for the purpose of amending the original corporate by-laws and electing non-qualified directors and officers and ordering the return of control of the worldly assets of the Fraternity to Poesnecker and his followers.

The Petition to this Court is brought by the genuine Fraternity which remains faithful to the Organic Laws and is the beneficiary of the religious and corporate trust established by

Dr. R. Swinburne Clymer, the founder of Beverly Hall and promulgated by his Organic Laws. By its action in the United States District Court, Petitioner sought ultimately to extricate the state courts from its internal religious affairs and to reverse the state's abuse of power pursuant to which Respondent Poesnecker now masquerades as the legitimate Supreme Grand Master and, in profane violation of the Fraternity's Organic Laws, has converted to his own material ends the worldly assets of the Fraternity. Similarly, Petitioner also sought to prevent Respondent Moyer from serving up its worldly assets to the profane service of Respondent Poesnecker.

Respondent Poesnecker has, *inter alia,* converted certain of the Petitioner's sacred facilities into a chiropractic clinic with the profits going to Poesnecker. This is but one of many examples of the profane conversion by Respondent Poesnecker of the Fraternity's assets to his own venal purposes all of which has been sanctioned and caused by the Pennsylvania courts' unprecedented abuse of power.

As the creatures of this abuse of governmental power, Respondents argue that any challenge to the Pennsylvania courts' intervention in Petitioner's internal religious affairs is precluded by application of the *Rooker-Feldman* doctrine. In doing so, Respondents bid this Court to ignore the astounding degree to which the Pennsylvania courts have meddled in purely religious matters as well as compelling legal precedent which holds that *Rooker-Feldman* preclusion is peculiarly inappropriate where, as here, vital First Amendment issues are at stake. (See Petition and citations therein.)

Moreover, *Rooker-Feldman* preclusion should not apply given that the issues and parties in the federal court are different from the issues and parties in the state court proceedings. In the state courts, Petitioner, the faithful faction and true Rosicrucian Fraternity, was not sued and did not otherwise become a party or in any way request, support or participate in any of the court proceedings, including the failed Intervention Proceedings brought by the dissident faction supporting Poesnecker. Since participation in the plebiscite would require Rosicrucians to violate their membership oath of allegiance to

the Organic Laws and heirarchial structure of the Fraternity, they refused to participate in the plebiscite. They are the beneficiaries of the perpetual corporate trust created by Dr. R. S. Clymer for the benefit of the faithful members of the Fraternity. They constitute the faithful faction and true Rosicrucian Fraternity who have been deprived of and have the right to the identity and property of the Fraternity. They are the individuals whose religious interests and rights have been damaged by the personal, illegal actions of the Respondents Poesnecker and Moyer, individually and jointly, which impermissibly burdened Petitioner's free exercise of religion and for the impermissible establishment of religion in violation of the First and Fourteenth Amendments of the U. S. Constitution.

The Organic Laws, governing the religious and temporal activities of the Fraterntiy, are supreme, immutable, binding upon all members, and the sine qua non for the perpetuation, preservation and continuation of the purity and integrity of the genuine Fraternity, its religion, its temporal property and activities carried on by the Corporation and the Foundation. Poesnecker's violation of the Organic Laws was wholesale. He was removed by the Council of Seven on forty four (44) specifications covering violations of both internal religious matters (dealing with Religious Trust) and corporate matters (dealing with Corporate Trust). During the course of the state court proceedings, he continued his treasonous actions to undermine the Fraternity by advocating that the By-Laws and Organic Laws are "outdated, complex and ambiguous," and "cross reference each other in inexplicable ways." He further argued that "it is no longer appropriate for the religious fraternity to be linked inextricably with the corporate entities under the control of one person." Now that he is in control as the result of the plebiscite, he is no longer inhibited by the Organic Law.

The Bill of Particulars against Respondent Moyer is voluminous. His infractions include violations of Federal Postal Law; violations of the Organic Laws, Tenets and Ancient Landmarks, Customs and Practices of the Fraternity; improperly providing logistic support to Respondent Poesnecker as

Supreme Grand Master prior to such a determination by a final order of the trial court; aiding and facilitating Respondent Poesnecker to violate an Injunction Order prohibiting Poesnecker from selling Fraternity literary materials dealing with the Order of the Magi (a religious Order of the Fraternity); abuse and waste of corporate assets. All of the above were in violation of both the Subordination Section (15 Pa. C.S.A. Sec. 5107) of the Pennsylvania Nonprofit Corporation Law, which guarantees the supremacy of the Organic Laws, Tenets and Ancient Landmarks by subordinating and superseding any inconsistent provision of the said statutory law, and Moyer's limited court appointing authority which provided that he "shall not become involved in any of the religious activities of the Corporations protected by the First Amendment of the United States and Article I, Section 3 of the Pennsylvania Constitution."

D. Conclusion

There can be no doubt as to the extreme threat posed by the actions of the state courts in this case to religious freedom and independence. In terms of the free exercise of religion and establishment of religion, there has never been before this Court a more thoroughgoing transgression by civil authority into religious affairs. The instant Petition challenges nothing less than the complete and total governmental seizure of an entire religious body replete with a top-to-bottom restructuring to suit the egalitarian instincts of the state trial judge who expressed at the very beginning of the litigation his distaste for hierarchical organizations. That the seizure, restructuring, re-staffing and sacking of the Fraternity were the products of years of litigation in the state courts in no way lessens the stunningly egregious nature of the governmental abuse which Petitioner confronts. By its action, the Fraternity seeks to extricate the Pennsylvania courts and their creations (i.e., Respondents) from its internal religious councils and the return of its religious autonomy. Given these stakes, the Petition should be granted.